Supreme Court, U.S.
FILED
SEP 27 1999
OFFICE OF THE CLERK

No. 99-135

IN THE

Supreme Court of the United States

WESTERN COAL TRAFFIC LEAGUE, *Petitioner,*

v.

SURFACE TRANSPORTATION BOARD
and UNITED STATES OF AMERICA, ET AL., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Petitioner Western Coal Traffic League ("Western Coal") hereby files this Reply to the September 17, 1999 Brief of Respondent Association of American Railroads ("Railroads") in Opposition to Petition for Writ of Certiorari ("Railroads' Brief").

SIGNIFICANT CONCESSIONS MADE BY THE RAILROADS PROVIDE ADDITIONAL SUPPORT FOR WESTERN COAL'S POSITION

In their Brief, the Railroads offer certain new admissions and concessions which further demonstrate the validity of Western Coal's arguments in support of a writ of certiorari.

1. The Eighth Circuit's Holding is Inaccurate

Although the Railroads' Brief misleadingly implies otherwise at certain points (*id.* at 20 & 21), the sole basis which the Eighth Circuit articulated for its decision affirming the Surface Transportation Board ("Surface Board") is its holding that the Surface Board "... properly reconciled the competing policies of the Act." *See* Petition at 8-10; Pet. App. A-23. As to this holding, the Railroads concede that the Eighth Circuit was "inaccurate." *See* Railroads' Brief at 23.

2. Not All Through Movements Implicate Through Rate Law

Western Coal argues that the Surface Board erred by wrongfully applying Court precedent on the law of through rates* to the proposed movements of the electric companies which would not move pursuant to through rates or through routes. *See* Petition at 13-14. While the Railroads seek to justify the Surface Board's mis-reliance on the Court's through rate cases (Railroads' Brief at 3), in the end they are forced to concede that there is, indeed, a category of through railroad movements which do not move pursuant to the joint rate and route laws. Id. at 25 n.23. These are the electric company movements. In rejecting the rate challenges of the electric companies on the basis of through rate law, the Surface Board applied the wrong standards of law to their movements.

3. The Applicable Law

The Board reached an erroneous decision because of its reliance on inapplicable Court precedent. It compounded its mistake by its failure to follow the Court's authorities

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* *See, e.g., Thompson v. United States*, 343 U.S. 549 (1952), *Louisville & N. R.R. v. Sloss-Sheffield & Iron Co.*, 269 U.S. 217 (1925), *Baltimore & O.S.W. R.R. v. Settle*, 260 U.S. 166 (1922).

which were directly applicable; namely *Atchison, T. & S.F. Ry. v. United States*, 279 U.S. 768 (1929) and *Great Northern Co. Ry. v. Sullivan*, 294 U.S. 458 (1935). The best that the Railroads can muster in the Surface Board's defense is their assertion that the Court's rate challenge principles which the electric companies champion were "overruled" -- in an agency decision. *See* Railroad Brief at 12 & 24 (*citing Metropolitan Edison Co. v. Consolidated Rail Corp.*, 5 I.C.C.2d 385 (1989)).

CONCLUSION

The decisions below enable the economic exploitation of electric consumers by the misapplication of Court precedents intended to protect the public from abuse by railroad monopolies. Only the Court can correct the misuse of its authorities.

Respectfully submitted,

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